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 Calpine Corporation, et al.

**UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK**

	:	Chapter 11
In re:	:	
	:	
CALPINE CORPORATION, <u>ET AL.</u> ,	:	Case No. 05-60200 (BRL)
	:	(Jointly Administered)
	:	
Debtors.	:	Civil Case No.08-01286

**APPELLEE CREDITORS' COMMITTEE'S COUNTER-DESIGNATION OF  
 ADDITIONAL ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL**

The Official Committee of Unsecured Creditors (the "Creditors' Committee") of Calpine Corporation, et al. (collectively, the "Debtors") submits, pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, its designation of additional items to be included in the record on appeal in connection with the Notice of Appeal filed by David Flair, Avram Ninyo and Merle Root (collectively, the "Flair Appellants") and the Statement of Issues and Designation of the Record filed by the Flair Appellants in the above-captioned proceedings.

On January 19, 2008, Compania Internacional Financiera, S.A., Coudree Global Equities Fund, Standard Bank of London, and Leonardo Capital Fund SPC (collectively, the "Objecting Shareholders") filed an appeal of certain rulings and orders of the Bankruptcy Court with respect to the Debtors' Sixth Amended Joint Plan of Reorganization, which was confirmed on December 19, 2007. A separate appeal of the Bankruptcy Court's decisions was filed on January 28, 2008,

by Elias A. Felluss (“Felluss Appellant”). On January 31, 2008, the Flair Appellants filed a motion to consolidate the appeals and to join the Objecting Shareholders’ emergency motions to expedite the appeal and for a stay pending appeal. Judge Laura T. Swain granted the Flair Appellants’ motion to consolidate the appeals and approved the Flair Appellants’ joinder request on February 1, 2008. After a hearing on the record, Judge Swain denied the motions to expedite the appeal and for a stay pending appeal. Although Judge Swain order the related appeals joined and consolidated, the Creditors’ Committee is filing this Counter-Designation of the record on appeal out of an abundance of caution.

**Counter-Designation Of Additional Items  
To Be Included In The Record On Appeal<sup>1</sup>**

A. The following items from the docket are to be included in the Creditors’ Committee’s Counter-Designation of the record on appeal:

<b>Item #</b>	<b>Filing Date</b>	<b>Docket #</b>	<b>Docket Text</b>
1.	06/20/2007	5015	Chapter 11 Plan of Calpine Corporation
2.	06/20/2007	5016	Disclosure Statement of Calpine Corporation
3.	06/20/2007	5017	Debtors' Motion for Entry of an Order Pursuant to Sections 105 and 363 of the Bankruptcy Code Authorizing the Debtors to (A) Enter Into Commitment Papers; (B) Pay Certain Fees and Expenses Relating Thereto; and (C) Enter Into an Amendment to the DIP Facility
4.	06/20/2007	5018	Chapter 11 Plan /Supplement to Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code of Calpine Corporation
5.	07/02/2007	5162	Debtors' Motion for Entry of an Order (A) Approving the

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<sup>1</sup> Each of the documents identified herein includes all exhibits, schedules, addendums and other documents attached thereto.

			Adequacy of the Debtors' Disclosure Statement; (B) Approving Solicitation and Notice Procedures with Respect to Confirmation of the Debtors' Proposed Plan of Reorganization; (C) Approving the Form of Various Ballots and Notices in Connection Therewith; and (D) Scheduling Certain Dates with Respect Thereto
6.	07/03/2007	5185	Affidavit of Service of Jade P. Hwa re: Notice of Debtors' Motion for Entry of an Order (A) Approving the Adequacy of the Debtors' Disclosure Statement; (B) Approving Solicitation and Notice Procedures with Respect to Confirmation of the Debtors' Proposed Plan of Reorganization; (C) Approving the Form of Various Ballots and Notices in Connection Therewith; and (D) Scheduling Certain Dates with Respect Thereto
7.	07/06/2007	5210	Affidavit of Service of Luis N. Valdivia for (1) Notice of Filing of Amended Exhibit to Plan Supplement; and (2) Notice of Presentment of Stipulation and Agreed Order Resolving Claim Numbers 5920 and 5921 Filed by General Electric Capital Corporation and Claim Number 5922 Filed by GE VFS Financing Holdings Inc.
8.	07/11/2007	5243	Order signed on 7/11/2007 Authorizing the Debtors to (A) Enter Into Commitment Papers; (B) Pay Certain Fees and Expenses Relating Thereto; and (C) Enter Into an Amendment to the DIP Facility
9.	07/20/2007	5365	Affidavit of Service (Supplemental) of Mercedes L. Clanton for Debtors' Motion for Entry of an Order (A) Approving the Adequacy of the Debtors Disclosure Statement; (B) Approving Solicitation and Notice Procedures with Respect to Confirmation of the Debtors' Proposed Plan of Reorganization; (C) Approving the Form of Various Ballots and Notices in Connection Therewith; and (D) Scheduling Certain Dates with Respect Thereto
10.	07/30/2007	5458	Affidavit of Service (Supplemental) of Greg Barlage for Debtors' Motion for Entry of an Order (A) Approving the Adequacy of the Debtors' Disclosure Statement; (B) Approving Solicitation and Notice Procedures with Respect to Confirmation of the Debtors' Proposed Plan of Reorganization; (C) Approving the Form of Various Ballots and Notices in Connection Therewith; and (D) Scheduling Certain Dates with Respect Thereto
11.	07/30/2007	5460	Affidavit of Service of Luis N. Valdivia for (1) Notice of Adjournment of Hearing on the Debtors' Disclosure Statement and Solicitation Procedures; and (2) Amended Exhibit B to Notice of

			Motion for Entry of Settlement Agreement and Order Pursuant to Bankruptcy Rule 9019 Approving Settlement Agreement By and Between the Debtors and Turlock Irrigation District
12.	08/08/2007	5571	Affidavit of Service (Supplemental) of Greg Barlage for Debtors' Motion for Entry of an Order (A) Approving the Adequacy of the Debtors' Disclosure Statement; (B) Approving Solicitation and Notice Procedures with Respect to Confirmation of the Debtors' Proposed Plan of Reorganization; (C) Approving the Form of Various Ballots and Notices in Connection Therewith; and (D) Scheduling Certain Dates with Respect Thereto
13.	08/15/2007	5626	Affidavit of Service of Luis N. Valdivia for Debtors' Motion for Entry of an Order (A) Approving the Adequacy of the Debtors' Disclosure Statement; (B) Approving Solicitation and Notice Procedures with Respect to Confirmation of the Debtors' Proposed Plan of Reorganization; (C) Approving the Form of Various Ballots and Notices in Connection Therewith; and (D) Scheduling Certain Dates with Respect Thereto
14.	08/20/2007	5660	Affidavit of Service (Supplemental) of Greg Barlage for Debtors' Motion for Entry of an Order (A) Approving the Adequacy of the Debtors' Disclosure Statement; (B) Approving Solicitation and Notice Procedures with Respect to Confirmation of the Debtors' Proposed Plan of Reorganization; (C) Approving the Form of Various Ballots and Notices in Connection Therewith; and (D) Scheduling Certain Dates with Respect Thereto
15.	08/27/2007	5703	Amended Disclosure Statement (Blackline) of Calpine Corporation
16.	08/28/2007	5718	Affidavit of Service of Angela M. Lo for (1) Debtors First Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code Dated August 27, 2007; (2) Debtors First Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code Dated August 27, 2007 (Blackline Version); (3) First Amended Disclosure Statement for Debtors First Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code; (4) First Amended Disclosure Statement for Debtors First Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code (Blackline Version); (5) Supplement to Debtors First Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code; (5) Supplement to Debtors First Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code Table of Contents; and (6)

			Supplement Table of Contents to Debtors First Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code Table of Contents (Blackline Version)
17.	08/30/2007	5744	Affidavit of Service of Luis N. Valdivia for (1) Notice of Filing of Supplement to Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code; and (2) Second Notice of Adjournment of Hearing on the Debtors' Disclosure Statement and Solicitation Procedures
18.	09/10/2007	5827	Affidavit of Service (Supplemental) of Greg Barlage for Debtors' Motion for Entry of an Order (A) Approving the Adequacy of the Debtors' Disclosure Statement; (B) Approving Solicitation and Notice Procedures with Respect to Confirmation of the Debtors' Proposed Plan of Reorganization; (C) Approving the Form of Various Ballots and Notices in Connection Therewith; and (D) Scheduling Certain Dates with Respect Thereto
19.	09/12/2007	5858	Chapter 11 Plan /Amended Exhibit 12 to Plan Supplement of Calpine Corporation
20.	09/21/2007	6083	Affidavit of Service of Luis N. Valdivia for (1) Debtors' Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code; (2) Blackline of Debtors' Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code; (3) Second Amended Disclosure Statement for Debtors' Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code; and (4) Blackline of Second Amended Disclosure Statement for Debtors' Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code
21.	09/22/2007	6086	Debtors' Omnibus Response In Support Of Motion For Order (A) Approving Disclosure Statement And (B) Approving The Solicitation Procedures And Form Of Solicitation Documents And Notices
22.	09/24/2007	6116	Affidavit of Service of Luis N. Valdivia for (1) Debtors' Third Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code; (2) Blackline of Debtors' Third Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code; (3) Third Amended Disclosure Statement for Debtors' Third Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States

			Bankruptcy Code; and (4) Blackline of Third Amended Disclosure Statement for Debtors' Third Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code
23.	09/25/2007	6129	Affidavit of Service of Luis N. Valdivia for Debtors' Omnibus Response in Support of Motion for Order (A) Approving Disclosure Statement and (B) Approving the Solicitation Procedures and Form of Solicitation Documents and Notices
24.	10/02/2007	6176	Affidavit of Service of Luis N. Valdivia for (1) Debtors Fourth Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code; (2) Fourth Amended Disclosure Statement for Debtors Fourth Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code; and (3) Notice of Debtors' Motion for an Order Pursuant to Sections 363 and 365 of the Bankruptcy Code and Bankruptcy Rule 9019 Authorizing and Approving: (I) the Assumption, on Amended Terms, of the Restructuring Agreement with Siemens Power Generation, Inc.; (II) the Rejection of Certain Contracts with Siemens Power Generation, Inc.; and (III) the Assumption of Certain Contracts with Siemens Power Generation, Inc.
25.	10/03/2007	6182	Affidavit of Service Regarding Objection to Motion for Entry of an Order (A) Approving the Adequacy of the Debtors' Disclosure Statement; (B) Approving the Solicitation and Notice Procedures With Respect to Confirmation of the Debtors' Proposed Plan or Reorganization; (C) Approving the Form of Various Ballots and Notices in Connection Therewith; and (D) Scheduling Certain Dates with Respect Thereto
26.	10/22/2007	6371	Affidavit of Service of Financial Balloting Group LLC of Solicitation Packages and Non-Voting Packages on Holders of Public Securities
27.	10/24/2007	6407	Affidavit of Service of Financial Balloting Group LLC of Solicitation Packages and Non- Voting Packages on Holders of Public Securities
28.	10/29/2007	6458	<b>(THIS DOCUMENT IS BLOCKED FROM PUBLIC VIEW TO COMPLY WITH PRIVACY GUIDELINES)</b> Affidavit of Service (Supplemental) of Melissa Membrino for Solicitation Packages

29.	10/29/2007	6460	Affidavit of Service of Luis N. Valdivia for Affidavit of Service of Financial Balloting Group LLC of Solicitation Packages and Non-Voting Packages on Holders of Public Securities
30.	10/30/2007	6467	Transcript Of Hearing Held On October 24, 2007, Re: Notice Of Agenda Of Matters Scheduled For Hearing
31.	11/02/2007	6487	Affidavit of Edward O. Sassower in Support of Debtors' Request for an Order Setting Date, Time and Place for Hearing on Motion Seeking Approval of an Immaterial Modification to the Debtors' Joint Plan of Reorganization Without the Need for Further Solicitation of Votes
32.	11/06/2007	6504	Affidavit of Service (Amended) (Supplemental) of Melissa Membrino for Solicitation Packages for the Debtors' Fourth Amended Joint Plan of Reorganization
33.	11/06/2007	6505	Affidavit of Service (Supplemental) of Mercedes L. Clanton for Solicitation Packages for the Debtors' Fourth Amended Joint Plan of Reorganization
34.	11/07/2007	6530	Affidavit of Service (Supplemental) of Melissa Membrino re Solicitation Packages
35.	11/07/2007	6531	Affidavit of Service (Supplemental) of Melissa Membrino re Solicitation Packages
36.	11/07/2007	6535	Affidavit of Service of Luis N. Valdivia for (1) Notice of Motion Seeking Approval of an Immaterial Modification to the Debtors' Joint Plan of Reorganization Without the Need for Further Solicitation of Votes; and (2) Ex Parte Order Pursuant to Bankruptcy Rule 9006(c) and Local Rules 9006-1 and 9077-1, Setting Time, Date and Place for Hearing on the Motion Seeking Approval of an Immaterial Modification to the Debtors' Joint Plan of Reorganization Without the Need for Further Solicitation of Votes
37.	11/20/2007	6647	Notice of Filing of Summary of the Equity Committee's Valuation Analysis
38.	11/20/2007	6650	Notice of Hearing on Debtors' Fourth Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code



39.	11/26/2007	6682	Affidavit of Service /Publication of Marcus Edmonds in USA Today re Notice of Confirmation Hearing
40.	11/27/2007	6712	Order signed on 11/27/2007 Appointing Energy Expert
41.	11/27/2007	6714	Amended Order signed on 11/27/2007 Appointing Energy Expert
42.	11/27/2007	6724	Affidavit of Service of Luis N. Valdivia for Notice of (I) Confirmation Hearing and Objection Deadline with Respect to the Debtors Plan, and (II) Solicitation and Voting Procedures
43.	11/27/2007	6727	Affidavit of Service of Luis N. Valdivia for (1) Notice of Filing of Updated Valuation Analysis for Calpine Corporation, et al.; (2) Updated Valuation Analysis for Calpine Corporation, et al; (3) Notice of Hearing on Debtors' Fourth Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code; (4) Notice of Filing of Amended Stipulation and Amended Order Resolving All Claims Asserted Against, by and on Behalf of the Holders of the First Lien Debt; (5) Debtors' Objection to 6% Convertible Noteholders' Motion Pursuant to 11 U.S.C. 105 and 1123 for Order (I) Requiring Establishment of Reserve for Certain Claims in Connection with Debtors' Fourth Amended Chapter 11 Plan or, in the Alternative, (II) Directing That Reserves Established for Other Claims be Made Available to Satisfy Certain of the Convertible Noteholders' Claims to Extent Such Other Claims are Resolved at Less Than Reserved Amounts
44.	12/07/2007	6957	Affidavit of Service /Publication of Tim Hart in Financial Times
45.	12/07/2007	6958	Affidavit of Service /Publication of Gail Feagins in the Houston Chronicle
46.	12/07/2007	6959	Affidavit of Service /Publication in the San Jose Mercury News
47.	12/07/2007	6960	Affidavit of Service /Publication of Meagan Russell in The Globe and Mail
48.	12/07/2007	6961	Affidavit of Service /Publication of Tiffany Cox in the Wall Street Journal
49.	12/13/2007	7036	Memorandum of Law of the Official Committee of Unsecured Creditors of Calpine Corporation, et al. in Support of Confirmation of Debtors' Fourth Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code



50.	12/13/2007	7098	Notice of Proposed Order /Proposed Findings of Fact, Conclusions of Law, and Order Confirming Fifth Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code
51.	12/19/2007	7230	Affidavit of Service of Jade P. Hwa re: Documents Served on December 14, 2007
52.	01/12/2008	7391	Affidavit of Service of Financial Balloting Group LLC of Notice of Confirmation on Holders of Public Securities
53.	01/24/2008	7478	Written Opinion/Memorandum Decision and Order signed on 1/24/2008 Denying Motion of Compania Internacional Financiera, S.A., Coudree Global Equities Fund, Standard Bank Of London and Leonardo Capital Fund SPC for a Limited Stay Pending Appeal of Confirmation Order and Plan Modification Order
54.	1/29/08	7519	Transcript Of Hearing Held On January 15, 2008, Re: Notice Of Amended Agenda Of Matters Scheduled For Hearing
55.	01/31/2008	7551	Statement /Notice of Occurrence of Effective Date of Debtors' Sixth Amended Joint Plan of Reorganization

**B.** The following non-docketed items are to be included in the Creditors' Committee's Counter-Designation of the record on appeal and are attached as exhibits hereto:

1.	10/12/2007	Transcript of Hearing before Judge Leonard B. Sand in the District Court for the Southern District of New York (Official Committee of Equity Security Holders v. Calpine Corporation, <u>et al.</u> , and Official Committee of Unsecured Creditors (attached hereto as Exhibit A)
2.	12/19/2007	Transcript of Hearing before Judge Burton R. Lifland in the Bankruptcy Court for the Southern District of New York on December 19, 2007 (attached hereto as Exhibit B)
3.	01/4/2008	Letter to Judge Burton R. Lifland from Debtors' Counsel regarding request by Compania Internacional Financiera, S.A., <u>et al.</u> , to reopen discovery in support of their Motion to Reconsider Confirmation Order and Second Modification Order (attached hereto as Exhibit C)
4.	01/7/2008	Letter to Judge Burton R. Lifland from Compania Internacional Financiera, S.A., <u>et al.</u> , responding to Debtors' Counsel's letter dated January 7, 2008 (attached hereto as Exhibit D)

5.	1/24/2008	Transcript of Hearing before Judge Burton R. Lifland in the Bankruptcy Court for the Southern District of New York on January 24, 2008 (attached hereto as Exhibit E)
6.	2/1/2008	District Court Order entered on February 1, 2008 denying Motion for Limited Stay and Expedited Appeal (attached hereto as Exhibit F)

Dated: February 11, 2008  
New York, New York

**AKIN GUMP STRAUSS HAUER & FELD LLP**

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